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HAROLD B. WILLEY,

IN THE

Supreme Court of the United States

OCTOBER TERM 1952.

No. 793

CAROLINE McDONALD WISMILLER, *Claimant, Petitioner,*

against

ESTATE OF HENRIETTA E. GARRETT, Deceased, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

CAROLINE McDONALD WISMILLER,
Pro se

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR WRIT OF CERTIORARI

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Caroline McDonald Wismiller, respectfully represents: That, as she has not received justice in the State Supreme Court of Pennsylvania, which is the court of last resort in this state, she must seek justice in the next court available which in this case is the United States Supreme Court.

That it is a true fact that she is a first cousin of the decedent. That she has given this true fact to the courts of Pennsylvania, but it is ignored. Thus it is a great injustice to her for the amount involved is enormous. Approximately $17,000,000.

That the right to appeal to the United States Supreme Court is granted her by the United States Constitution. And she cites from the United States Constitution. Bill of Rights. Art. 1.

> "Congress shall make no law abridging the right of the people peaceably to assemble and to petition the government for a redress of grievances."

The United States Supreme Court has jurisdiction in this case. The judicial power of the United States Supreme Court shall extend to all cases in law and equity arising under the United States Constitution and the laws of the United States. And she cites from the United States Constitution. Art. 3, sec. 2, Ci. 1.

> "The judicial power shall extend to all cases in law and equity arising under this Constitution."

From the Constitution of the Commonwealth of Pennsylvania, Art. 1, Sec. 1, Natural Rights of Mankind, she cites that

> "All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and reputation, and of pursuing their own happiness."

Your Petitioner therefore respectfully prays your Honorable Court that a Writ of Certiorari issue to the Supreme Court of the State of Pennsylvania.

Washington, D. C., May ....., 1953.

Respectfully submitted,

CAROLINE MCDONALD WISMILLER,
Pro se

No. 793

1. In the Supreme Court of Pennsylvania
   Eastern District

2. January Term, No. 200 of 1952

3. Estate of Henrietta E. Garrett, Deceased
   Appeal of Caroline McDonald Wismiller

4. Brief for Appellant and Record

5. Appeal from the Decree of the Orphans'
   Court 2552 of 1932

6. Caroline McDonald Wismiller, P. P.
   Patrick Henry Hotel
   208-10 S. 8th Street
   Philadelphia 7, Pa.

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WHY WAS THE DECEDENT
NOT LEGALLY IDENTIFIED?

NEGATIVED.

BRIEF

Has Caroline McDonald Wismiller, the Appellant, by competent and credible evidence established a status of next of kin and heir-at-law of Henrietta E. Garrett, the decedent?

The Auditing Judge found she had not.

Why was the decedent not legally identified? Negatived.

ARGUMENT

The appellant first entered the case Sept. 1949, and laid legal claim to the estate as first cousin of the decedent. She is a citizen of Omaha, Nebraska, and was not in touch with events taking place in Philadelphia, Pa. And so it was then she had just discovered that the Court had been laboring under fraud through all the years, not knowing the legal identity of the decedent, Mrs. Garrett.

She notified the Master at once, found him non Cooperative, refusing to answer most of the correspondence, ignoring her plea for help in presenting her formal claim, which at that time she then had to make herself. And when she presented it to him and asked him if it were satisfactory to the court, did he reply? He did not.

From Sept. 1949, until April 1951, she sent to his office a complete genealogy of the decedent's direct family line paternal back through the grand parents, with their permanent locations, and addresses where their legal family records are recorded in public records. She sent information and requested investigations. Was the information used for investigation? If so she was never informed. Many of these records are not far from Philadelphia. They are in Washington, D. C., Trenton, N. J., New York City, and Brooklyn, N. Y. Only a few of them would be necessary for the needed evidence.

ARGUMENT

The Appellant never doubted the integrity of the office, and so thought on her arrival in the city that she would be given all the needed recorded evidence at the office if it had not been already turned over to the court. On her arrival at the office here in April 1951, the Master had just gone and she was invited to please go away. Then she thought for certain that the evidence was already with the court, and that any testimony given would simply be court routine, some thing almost unnecessary on account of the accumulated evidence.

She had to depend on that office, all her investigations must be made through it. What better evidence could be produced that those records? What better witnesses could be found for events that go back more than a century? I know of none. The Master was the person authorized to do this work. When he failed what can be done about it? The seriousness comes to light when the judge discusses her claim.

Appellant testified April 26, 1951. (see pages 254 to 273) Audit notes of Testimony. The testimony is true, tho' it seemed queer to the Judge. Many times truth is stranger than fiction.

The auditing Judge discusses her claim on pages 322 to 324 of his Adjudication of testimony, kinship claims. On page 324, he introduces into her sworn testimony a confidential letter she had written to a judge more than a year before she testified. The extract is correct and she wrote it. She sent a copy to the Master. It was written while she was pleading for an investigation of this early marriage, and the name of Mrs. Garrett's mother. She admits that she did resort to the trial and error method, it's always permissable, and rarely fails to get the correct result. She knew an investigation of the contents of that letter might reveal first hand to the Master what she wanted him to know. She wanted re-

corded evidence for the court. A few days later she sent him the truth as she had always known it. The same judge should have received a copy of the same letter, as she sent him one also. Thus an immediate verification should have been made at the time. That's what the letter was for. It had no place in a sworn testimony more than a year later. The testimony is the very truth.

Who but an infamous criminal would so perjure herself by giving false testimony in a matter so momentous?

The Auditing Judge dismisses her claim (page 324) of his Adjudication. "The Auditing Judge further finds as a fact that Caroline McDonald Wismiller is not related to Henrietta E. Garrett, the decedent in any degree. The claim is therefore dismissed."

DOCKET ENTRIES

Dec. 5, 1951
Exceptions of Caroline McDonald Wismiller to the Adjudication filed.

Jan. 10, 1952
The Exceptions are all dismissed and the Adjudication is confirmed absolutely.
Per Curiam

EXCEPTIONS TO THE ADJUDICATION FILED

In the Orphans' Court of Philadelphia Co.
State of Pennsylvania
United States of America

The undersigned, Caroline McDonald Wismiller, claimant to the Garrett Estate, doth file exceptions to the adjudication handed down November 1951, by the Honorable Charles Klein, Associate Judge of the said Court in the matter entitled, Orphans' Court of Philadelphia, No. 2552 of 1932, Estate of Henrietta E. Garrett, Deceased.

BRIEF OF EXCEPTIONS

The exceptions are made for the reasons stated herein. The adjudication fails to establish legal identification of Henrietta E. Garrett. In this matter the adjudication is entirely fraudulent. Mrs. Garrett was Charlotte Mooney, who lived in the Schaeffer home about ten or twelve years, but she was not Schaeffer's daughter.

Dated this first day of December, 1951.

Caroline McDonald Wismiller
Claimant to the Garrett Estate

Filed in the Orphans' Court Dec. 5, 1951
In the Orphans' Court of Philadelphia Co.
No. 2552 of 1932
Estate of Henrietta E. Garrett, Deceased
VS
Caroline McDonald Wismiller

In reading the Adjudication, I find that the Schaeffer family record was not taken from a recorded record of the family, but from someone's memory as best they could remember it. The dates are all approximate dates, stating that it was on or about that time.

Then in looking through the old records in The Historical Society I find there the exact dates. It makes it just a little difficult to compare exact dates with approximate dates but it can be done in an approximate way. In the Historical Records I find this

DEATH CERTIFICATE

Sept. 5, 1859. Mrs. Schaffer's daughter. Age 4. Inflammation of the brain. Dr. Paiste. Burial Ground. Union Kensington.

Since this is an official death certificate the date is exact. But it is very evident that it was made to conceal the evidence of just who died Sept. 5, 1859. This death certificate may conceal the evidence that it was Mrs. J. C. Schaffer's daughter who died.

The Adjudication states that Emma Schaffer was born on or about April 21, 1856 and died about, perhaps, July 21, 1856. Had Mrs. Schaffer been questioned on her right to keep the Mooney girl she could still claim her as her own daughter. There would be no record to show that her own daughter had died. I think that she always feared that she would be claimed and taken away from her. Since these dates are only approximate it is very apt to be Emma who was concealed in the death certificate, made Sept. 5, 1859. It is because of former knowledge that I draw this conclusion.

Many years before there was a Garrett Estate I had definite specific knowledge that the Mooney girl was taken into the Schaffer home to compensate for the loss of their own daughter who had died. By combining my former knowledge with that found in the Adjudication I know that it must have been Emma Schaffer that the Mooney girl replaced.

Had I not had this former knowledge I could not make this positive statement. The Mooney girl born about 1849 in Ireland was given the name of Henrietta Schaffer. She was not given the name, Emma, because it would give people unaware cause to exclaim: "Oh, I thought Emma died!"

The fact that Henrietta Schaffer was not Schaffer's daughter was never an absolute secret, for in fact in earlier days everyone who knew them knew she was not. It is natural when we see a husband and wife living in a home with a child to think that must be the child of that couple. But many times on investigation we find that they are not that child's parents.

I always knew that Mrs. Garrett was the daughter of my uncle, Peter Mooney, I, also, knew that she lived with the Schaffers after coming to U.S.A. and that she was married to Walter Garrett, and that she lived in Phila-

delphia, but I did not know of her death in 1930 until 1949. To the best of my knowledge then I thought she had quite a few very near kin. But to be very honest, I think I did not think of her at all about that time. My father died in Jan. 1931, after a long illness and that's what occupied most of our thoughts about that time.

When I read of the world wide search for some of her kin still going on in 1949, I knew I could give the court immediately her direct line paternal. I knew she had many first cousins in this line, of course, that's where the legal heirs are found, and the starting place from which to work. The direct line maternal, I didn't have in mind, but I did know where the records were where they could be found, I couldn't bring this information direct to the court as it had appointed certain clerks to find and investigate the heirs.

At first I thought that would be a wonderful service, and so I informed them where they would find these heirs and their records. I thought it strange that they seldom answered my letters, but still I trusted that they would have no trouble finding the heirs and informing them. Not until I came here in April 1951, did I find that this service had been an obstruction to justice for me.

When I went to the office to get information, I was told that I shouldn't be here. "You are not your sister's sister, for a while we were going to let you be her half-sister, then we decided that we wouldn't let you be any thing. Now why don't you go away?"

Mrs. Garrett's father's family was my mother's family. Outline below.

Mooney-Lawler line

Family of John Mooney and his wife Ann Lawler Mooney. (nee Ann Lawler)
Time about 1825 until 1925.
Place, Leighlainbridge, County Carlow, Ireland.

Sons

Dennis Mooney, Leighlainbridge, County Carlow, Ireland.
Edward Mooney, Leighlainbridge, Co. Carlow.
James Mooney, Hicksville, L. I., New York.
Peter Lawley Patrick Mooney, 446 West Jackson Blvd., Chicago, Ill.
Thomas Mooney, Ottawa, Ill.
John Mooney, Ottawa, Ill.

Daughters

Margaret Mooney McDonald, wife of Mr. McDonald, Leighlainbridge, Co. Carlow, Ireland.
Delia Mooney Halsey, wife of Alexander, Trenton, N. J.
Sarah Mooney Carey, wife of John, Ottawa, Ill.
Mary Ann Mooney McDonald, wife of Jeffrey S., Manning, Iowa.

All members of this family are now deceased. All were born at Leighlain bridge. The addresses as given were their last. Here they spent the greater portion of their lives. Here they reared families. At these addresses will be found their records. You will note that Dennis, Edward, and Margaret never came to U.S.A., but most if not all of their children did.

Peter Lawler Patrick Mooney was the father of Mrs. Garrett.

Mary Ann Mooney was my mother. This makes me the first cousin of Mrs. Garrett, and one of her nearest living kin. All children of the above family are the first cousins of Mrs. Garrett, her nearest living kin, paternal, and so they, too, are legal heirs to the estate.

Mrs. Garrett was born at Leighlainbridge, County Carlow, Ireland. She was the only child of an early marriage of her father. The marriage was a failure and he brought the daughter to U.S.A. with him. She lived with Schaffers after their daughter, Emma, died, until her marriage to Walter Garrett.

My father's family. Outline as follows:

McDonald-Girard line
Family of Stephen McDonald and his wife, Jane Girard McDonald (nee Jane Girard).
Time about 1840 until 1940.
Place, Arischat, Nova Scotia, Canada.

Sons as follows:

Jeffrey S. McDonald, my father.
Ronald McDonald
James McDonald
Stephen McDonald

Daughters

Mary McDonald
Ann McDonald
Eliza McDonald
Jane McDonald
Caroline McDonald

All were born at Arischat, Nova Scotia, Canada, but later the family moved to Antigonish, Nova Scotia, Canada. Jeffrey S., my father, was the eldest and Stephen the youngest members of the family. There may have been kin-ship here to Mrs. Garrett's mother, but I never had the records. It would be, perhaps, through the Scotch McDonalds of Leighlainbridge, Ireland.

Jeffrey S., my father, and Mary Ann Mooney, my mother, were married in a Catholic Church in Brooklyn, N. Y., Sept. 28, 1870. Eight children were born to this union, two of whom survive:

Caroline McDonald Wismiller,
4338 Charles Street, Omaha, Nebraska

Annie McDonald Rogers,
Manilla, Iowa

BRIEF OF EXCEPTIONS

Three Grand-children:

Beatrice Rogers Earhart, 337 Englewood Ave., Chicago, Ill.

Charles M. Rogers, Des Moines, Iowa

Verna Rogers McCaffrey, Manilla, Iowa

One Great-grand-child:

Patrick John McCaffrey, born at St. Anthony Hospital, Carroll, Iowa, April 3, 1950.

Dated and signed this 13th day of Dec. in the year of our Lord 1951.

Opinion of court below as to exceptions.

SUR EXCEPTIONS TO ADJUDICATION

"This exceptant contends that Henrietta E. Scaeffer died when a child and that her parents took into their home and raised, under the name of their deceased daughter, a girl named Charlotte Mooney, who is the decedent in this case and is a first cousin to the exceptant. There is not the slightest bit of evidence to support this preposterous contention, which is obviously the figment of the exceptant's imagination."

"We are all satisfied, beyond any doubt, that there is no merit in any of these exceptions and that none of the exceptants is related to Henrietta E. Garrett, the decedent, in any degree."

THE FINAL DECREE

The exceptions are all dismissed and the adjudication is confirmed absolutely.

P. J. Sinkler, signed
Jan. 10, 1952